

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
CRIMINAL WRIT PETITION NO.2218 OF 2004**

Rupesh Ram Thakur,
Age: 25 years, residing
near Kaivalya Vidyalaya,
Reti Bunder, Mumbra,
District: Thane, at
present Yerwada Central
Prison at Pune.

.... Petitioner

- Versus -

1. Shri S. Chakravarty,
Commissioner of Police,
Thane.
2. The State of Maharashtra
3. The Superintendent,
Yerwada Central Prison,
Pune.

.... Respondents

Shri U.N. Tripathi for the Petitioner.

Shri D.S. Mhaispurkar, Addl. Public
Prosecutor, for the Respondents.

CORAM: R.M.S. KHANDEPARKAR &
P.V. KAKADE, JJ.

DATED: FEBRUARY 25, 2005

JUDGMENT (Per R.M.S.Khandeparkar, J.):

1. Heard the learned Advocates for the parties.
Perused the records.

2. The petitioner/detenu challenges the order of
detention dated 25-2-2004 issued under Section 3(1) of
the Maharashtra Prevention of Dangerous Activities of

Slumlords, Bootleggers, Drug-offenders and Dangerous Persons Act, 1981, hereinafter referred to as "the MPDA Act". The petitioner, a resident of Reti Bunder, Mumbra, District Thane, and presently lodged at Yerawada Central Prison, Pune, has been detained since 25-2-2004 pursuant to the said order passed under the MPDA Act. The said order is stated to have been issued with a view to prevent the petitioner from acting in any manner prejudicial to the maintenance of public order. The grounds in support of the detention order disclose that a complaint being C.R.No.I-191/2003 under Section 324 of the Indian Penal Code came to be registered at Mumbra police station on 14-7-2003 against the petitioner. As the petitioner was absconding, he could be arrested only on 22-9-2003, whereupon he was remanded to Magisterial custody. However, he was released on bail on 23-9-2003. After investigation, chargesheet came to be filed against the petitioner on 7-11-2003. Another complaint being C.R.No.I-245/2003 under Sections 337, 506(II), 323, 504, 506 and 427 of the Indian Penal Code came to be registered at the Mumbra police station against the petitioner consequent to which he was arrested and released on bail on 23-9-2003. Chargesheet in that regard, on conclusion of the investigation, came to be filed on 5-11-2003. Besides the said two cognizable offences, an anonymous application dated 14-11-2003 was received on 26-11-2003 by the Police purportedly from a

resident of Gautam Nagar, Reti Bunder, Mumbra, alleging threats at the point of knife to the shopkeepers in the area in order to enable the petitioner to take materials free of charge and posing as a "dada" of the area by the petitioner. Two in-camera statements were recorded on 4-12-2003 and 5-12-2003 - the first of an autorickshaw driver and the second of a grocery shop owner. In both the statements, the deponents accused the petitioner of a criminal character with narration of criminal activities by him in the area. On 27-12-2003, at around 12:30 hours, the PSO, Mumbra police station received an anonymous telephonic call alleging that the petitioner along with three associates armed with knife, iron rod, etc., were threatening the shopkeepers and the vegetable vendors and were extorting money from them and there was chaos in the locality. On verification, the police found that the shops in the locality were closed, vegetables, groceries and other articles were scattered in the area and the atmosphere was tense and nobody was prepared to elucidate the truth to the police and the petitioner and his associates were not traceable. The sponsoring authority thereafter proposed clamping of detention order upon the petitioner and the proposal in that regard was moved on 9-1-2004, after being duly processed through all the channels, the impugned order came to be passed on 25-2-2004 and was served on the petitioner on the very day.

3. The challenge to the impugned order is two-fold. Though the petitioner has enumerated various grounds of challenge to the impugned order in the petition, the learned Advocate for the petitioner has restricted the challenge to only two grounds, one relating to absence of application of mind by the authority in as much as that the incidents narrated as being the justification for issuance of the detention order do not disclose activities causing disturbance of public order but the same may, at the most, reveal law and order problem, and secondly, that there was inordinate delay in sponsoring and issuing the order of detention from the date of the incidents which are the basis for clamping the detention order and there is no explanation for such delay. On the other hand, it is the case of the respondents that the petitioner's acts disclose the activities of terrorising nature with the intention to gain pecuniary benefits resulting in disturbance of the public order and that there is no delay in clamping the detention order nor in sponsoring the said order. Considering the complaints registered in September, the investigation which had followed and the continued criminal activities on the part of the petitioner revealed from the anonymous application, the in-camera statements and the anonymous telephone call justify the clamping of detention order and taking into consideration all these

activities which have been the basis for the detention of the petitioner, it cannot be said that the live link had snapped.

4. While assailing the impugned order in relation to the first ground of challenge, it was sought to be argued on behalf of the petitioner that proper analysis of the incidents which are referred as being the basis for issuing the detention order would by no stretch of imagination disclose the activities which could disturb the public order or the even tempo of the life of the society. Besides, the detaining authority has nowhere stated as to how the public order was disturbed on account of the alleged activities of the petitioner. Even assuming but without admitting that his acts disclose illegal activities, the same at the most reveal one-to-one disputes which may be cause for law and order problem but certainly not of the nature disturbing the public order. Reliance is sought to be placed in the matter of **State of U.P. v. Kamal Kishore Saini**, reported in 1988 Cri.L.J. 405, **Gulab Mehra v. State of U.P. and others**, reported in 1988 Cri.L.J. 168, **Mustakmiya Jabbarmiya Shaikh v. M.M. Mehta, Commissioner of Police and others**, reported in 1995 SCC (Cri.) 454 and **State of U.P. v. Sanjai Pratap Gupta alias Pappu & Ors.**, reported in 2005 All M.R. (Cri.) S.C.S.N. 4.

5. The learned A.P.P., on the other hand, referring to the grounds in support of the impugned order, has submitted that the materials before the detaining authority, as rightly concluded by the respondent/authority in the said grounds, disclosed the activities of the petitioner sufficient to disturb the public order and the even tempo of the life of the society and therefore those activities cannot be termed as law and order problem. The impact of the activities on the public and the fear psycho created in the mind of the public resulting in hesitation to come forward to help the victims as well as to disclose the truth to the police clearly establish the activities to be of the nature like disturbing the public order. Reliance is sought to be placed in the decision in the matter of **Mr. Manzoor @ Mansoor @ Manoj Ahmed Sayed Ahmed v. Shri R.H. Mendonca & Ors.**, reported in 2000 All M.R. (Cri.) 1600.

6. In **Kamal Kishore Saini's** case (supra), it was held that whether an act relates to law and order or to public order depends upon the effect of the act on the life of the community or in other words the reach and effect and potentiality of the act if so put as to disturb or dislocate the even tempo of the life of the community, it will be an act which will affect public

order. That was a case wherein the incident alleged against the detenu was that he had committed murder of a person in night hours. It was an incident confined to individual person and it was a private crime as distinct from public crime. It was not in any way affecting the even tempo of life of the community nor did it affect the peace and tranquillity of the people of that particular locality where the crime was committed and therefore it was held that the incident did not affect the public order. But at the same time it was observed that where the detenus allegedly opened fire in busy locality resulting in death of one on the spot and injured others during the day time, the incident did affect the public order as its reach and impact was to disturb the public tranquillity and it affected the even tempo of life of the people in the locality where the incident had occurred.

7. If the incidents alleged concern particular individuals and do not create any terror or panic or fear psycho in the locality affecting the even tempo of the life in the locality then it would be a law and order problem and not the one relating to public order. In **Ram Manohar Lohia v. State of Bihar** {AIR 1966 SC 740}, it was held that the contravention of law always affects order but before it can affect public order it must affect the community or the public at large. While

highlighting the salient features of the two concepts, the Apex Court in **Arun Ghosh v. State of West Bengal** {AIR 1970 SC 1228}, observed that the public order relates to the even tempo of the life of the community taking the country as a whole or even a specified locality whereas the acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquillity would constitute law and order problem. It was held that "It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order." When the implications of the acts are deeper and the even tempo of life is affected, then it jeopardizes the public order. The repercussions of an act can embrace larger sections of the community and may incite them to make further breaches of law and order and to subvert the public order, and therefore, it was held that "An act by itself not determinant of its own gravity. In quality it may not differ from another but its potentiality it may be very different". The Apex Court, therefore, in **Pushkar Mukherjee v. State of West Bengal** {AIR 1970 SC 852} observed that the contravention of any law always affects order but before it can be said to affect the public order, it must affect the community or the public at large.

8. In **Ashok Kumar v. Delhi Administration** {AIR 1982 SC 1143}, while elucidating that the difference between two concepts lies not in the nature or quality of the act, but in the degree and extent of its reach upon the society, ruled that acts similar in nature be committed in different contexts and circumstances might cause different reactions and that therefore it is the potentiality of the act to disturb the even tempo of the life of community which makes it prejudicial to the maintenance of public order.

9. In **Gulab Mehra's** case (supra), the order of detention was made on vague grounds and there was nothing to show that on consideration of the prior conduct and the acts of the detenu, there was a likelihood of the detenu indulging in the activities prejudicial to the maintenance of public order if he is set free and/or released from custody. It was also observed that even though the contention which was raised in the petition was about the absence of proof of satisfaction to the detaining authority, there was no counter affidavit filed by the District Magistrate who was the detaining authority but the same was filed by the police officer. As there was no proof of the satisfaction of the detaining authority, the detention was held illegal.

10. In **Sanjai Pratap Gupta's** case (supra), while differentiating the law and order problem from the activities leading to the disturbance of public order, it was held that it lies not merely in the nature or quality of the act, but in the degree and extent of its reach upon society besides that the acts similar in nature, but committed in different contexts and circumstances, might cause different reactions. An act by itself, therefore, is not determinant of its own gravity and in its quality it may not differ from other similar acts, but in its potentiality, that is, in its impact on society, it may be very different and, therefore, it is not the number of acts that matter, and even a single act can be sufficient for holding that the public order is affected.

11. In **S.K. Keder v. State of West Bengal** {AIR 1972 SC 1647}, it was held that an act in its quality may not differ from another but in its potentiality it may be very different and similar acts in different contexts affect differently law and order on the one hand and public order on the other, and hence it is always a question of degree of the harm and its effect upon the community. It is the degree of disturbance upon the life of the community which determines whether the disturbance amounts only to a breach of the law and order or the public order.

12. In **State of U.P. v. Hari Shankar Tewari** {AIR 1987 SC 998}, the Apex Court has emphasized the need of ascertaining from the facts of each case as to whether the matter relates to the larger circle or the smaller one, while holding that an act which may not at all be objected to in certain situations is capable of totally disturbing the public tranquillity in another situation.

13. In **Mustakmiya Jabbarmiya Shaikh's** case (supra), while reiterating the earlier decisions to the effect that it is the degree of disturbance and its impact upon the even tempo of life of the society or the people of a locality which determines whether the disturbance caused by such activity amounts only to a breach of "law and order" or it amounts to breach of "public order", held that if the activity falls within the category of disturbance of "public order" then it becomes essential to treat such a criminal and deal with him differently than an ordinary criminal under the law as his activities would fall beyond the frontiers of law and order, disturbing the even tempo of life of the community of the specified locality. If any act of a person creates panic or fear in the minds of the members of the public, upsetting the even tempo of life of the community, such act must be said to have a direct bearing on the question of maintenance of public order.

If a detention order passed more than 16 months after the alleged prejudicial conduct of the detenu without any sufficient cause or justification, then such a stale incident cannot be construed as justifiable ground for passing an order of detention.

14. A recent decision of the Apex Court, on the similar issue is in the matter of **Hasan Khan Ibne Haider Khan v. R.H. Mendonca and others**, reported in 2000 AIR SCW 937. Therein the order of detention which was passed on 12-4-1999 with a view of preventing the detenu from acting in any manner prejudicial to the maintenance of public order was sought to be challenged on two grounds; firstly, the documents supplied to the detenu were illegible and secondly, the alleged prejudicial activities of the detenu, if accepted on their face value, would demonstrate a breach of law and order and not the public order. Both the contentions were rejected by this Court and the matter was carried in appeal before the Apex Court. While dealing with the second ground of challenge, the Apex Court referred to the grounds of detention which disclosed a criminal proceeding registered against the detenu and his associates with reference to occurrence which took place on 9-12-1998. Harishchandra Gupta had gone near his place of business and noticed that his younger brother was being assaulted by the detenu and his associates and

when he rushed to see his brother, the detenu and his associates assaulted him and when Harishchandra Gupta and his brother sought for help, none dared to come forward for their help. Gist of the statements of witnesses "A and B" was also recorded in the grounds of detention and their entire statements were produced before the Apex Court. From the statement of witness "A", it was found that the detenu was a notorious goonda of the locality and with his associates moved about armed with deadly weapons and collected money from the residents and assaulted those who refused to pay. The detenu with his associates went to the fruit stall of the said witness and took out a chopper and started threatening him by using filthy language and on seeing the incident the nearby vegetable and fruit vendors ran away with their baskets. The passers-by also ran away due to fright. From the statement of witness "B", it was found that the detenu and his associates used to collect money from the businessmen on threats of assault and out of fear of the detenu none would dare to inform the police. After taking note of the decision in **Amanulla Khan Kudeatalla Khan Pathan v. State of Gujarat** {1999 AIR SCW 2222 = AIR 1999 SC 2197} wherein the Apex Court had considered the expression "acting in any manner prejudicial to the maintenance of public order" as well as referring to its earlier decision in **Mustakmiya Jabbarmiya Shaikh's** case, it was held that:-

"the fall-out and the extent and reach of the alleged activities must be of such a nature that they travel beyond the capacity of the ordinary law to deal with him or to prevent his subversive activities affecting the community at large or a large section of society and it is the degree of disturbance and its impact upon the even tempo of life of the society or the people of a locality which determines whether the disturbance caused by such activity amounts only to a breach of "law and order" or it amounts to breach of "public order"."

It was further ruled that:-

"Applying the above ratio to the grounds of detention, we find that the appellant extorted money from businessmen and also gave threats to the people at the public place and thereby undoubtedly affected the even tempo of life of the society, therefore, such activities cannot be said to be mere disturbance of law and order."

15. In the case in hand, the grounds of detention clearly reveal various acts which, in the opinion of the detaining authority, led to disturbance of the public order and which reveal the tendency and inclination of the detenu towards the commission of activities of criminal nature with total disregard to the existing law. The activities of the detenu referred to in the grounds of detention reveal an assault with gupti on Shri Gangaram Krishna Salunkhe on 13-7-2003 which created fear and terror in the minds of the public in the locality. Another incident relates to 31-8-2003 when the detenu threatened one Shri Gupta while abusing him in filthy language and creating fear in the minds of the people in the locality and the residents and the witnesses, though noticed the incident, did not come forward to help the victim or to resist the detenu from abusing and assaulting the said Gupta inspite of the fact that the victim was crying for help.

16. Apart from the said two cognizable cases, an anonymous application dated 14-11-2003 purportedly from a resident of Gautam Nagar, Reti Bunder, Mumbra was received by the Police Inspector by post on 26-11-2003 informing the police that the detenu being a person of violent criminal character posing himself as 'dada' of Gautam Nagar threatens the residents to kill them and

also demands commodities from shopkeepers free of charge and those who oppose were being threatened at the point of knife. The application further disclosed that the detenu had injured innocent persons with gupti and had extorted money from them, for which offences were registered against him at the Mumbra police station and he was even arrested but had been successful in getting released on bail and that the detenu is in possession of a revolver which is being illegally used by him. He had forcibly taken a sum of Rs.100/- from a friend of the applicant and the said friend did not lodge complaint out of fear of retaliation. The applicant was being harassed by the detenu. Pursuant to the letter, enquiries made by the police revealed that number of people had suffered at the hands of the detenu. The detenu being a weapon wielding desperado, nobody came to depose against him openly due to fear of reprisal. The Police Inspector on taking the victims into confidence and only on assurance of their identity being kept secret and that they would not be called to the Court to depose, two of the victims volunteered to give in-camera statements and they were accordingly recorded.

17. The in-camera statement of the rickshaw driver discloses that the detenu is of ill-known criminal character in the area and he along with his associate had abused the rickshaw driver for no mistake on the

part of the driver and further threatened him in abusive language at the point of knife which was placed on his belly. The person along with the rickshaw driver, instead of helping him, ran away from the place and the passers-by near the place of the incident also pretended to have not seen the incident and did not come forward to help the victim due to the fear of the detenu which in turn lead to the public disturbance. In the process, apart from abusing him, the detenu snatched away the gold chain which was around his neck and gave a kick on the said rickshaw driver. Considering the character of the detenu, the rickshaw driver did not lodge the complaint against the detenu.

18. Another witness being a grocery shop owner has stated in his in-camera statement that the detenu has indulged in criminal activities and had created a rein of terror at Reti Bunder and its adjoining areas. He has stated in his statement recorded on 5-12-2003 that on one of the days in the month of October, 2003, he had purchased various articles from Mumbai for his shop and was returning to his house. On his way, all of a sudden, he was obstructed by the detenu and his associates threatening him at the point of knife and demanding money from him. He was then assaulted with slaps and kicks. His bag fell down and the groceries were scattered on the road. With the hope of getting

help, he shouted for help but immediately he was threatened with knife and as a result nobody dared to come forward to help the victim and the passers-by and the residents nearby noticing the same did not dare to come forward and it resulted in disturbance of the public order.

19. On 27-12-2003 an anonymous telephonic call was received by the PSO, Mumbra police station to the effect that the detenu along with his associates armed with iron rod were threatening the shopkeepers and the vegetable vendors near Kutubi Manzil in Mumbra Bazarpeth area and were extorting money from them and the people were running helter-skelter in the area. On receipt of the above call, the police proceeded to the spot and they noticed that the shops were closed, vegetables, groceries and other articles of sale in the market were found scattered and the entire atmosphere was tense, yet nobody was coming forward to elicit the truth out of fear of the detenu. The detenu by that time had disappeared from the spot.

20. The above referred incidents coupled with the effect of the activities of the detenu which had upset the even tempo of life in the locality whenever and wherever the incident involving the detenu had occurred and further reluctance on the part of the members of the

public to help the victims and come forward to lodge complaint clearly disclosed the creation of panic and fear in the minds of the members of the public as a result of the criminal acts on the part of the detenu and all those facts clearly reveal that the acts on the part of the detenu were clearly affecting the public order and they were not mere law and order problem. The incidents narrated obviously relate to the activities sufficient to cause breach of public order and being so the challenge to the detention order on the ground of non-application of mind is devoid of substance.

21. The learned Advocate, while assailing the impugned order on account of inordinate delay in sponsoring and passing the impugned order, has submitted that the respondents have failed to disclose sufficient cause for such delay or to justify the same and more particularly the period between 5-12-2003 and 9-1-2004 and further from 30-1-2004 to 17-2-2004 and on that count alone the impugned order of detention is liable to be quashed and in that regard reliance is sought to be placed in the decision of the Apex Court in the matter of **Pradeep Nilkanth Paturkar v. S. Ramamurthi**, reported in AIR 1994 SC 656.

22. The learned A.P.P., on the other hand, has submitted that apart from the fact that the records

themselves disclose that there was no delay and the proceedings which were required to be followed while passing the detention order and which has been followed in the case in hand, reveal that the time consumed for passing the order has been clearly justified. In support of his contention, he has relied in the matters of **Shri Pramod @ Popat @ Poptya Mahadeo Adsul v. Shri R.H. Mendonca & Ors.**, reported in 2000 All M.R. (Cri.) 1456 and **Abdul Rehman Mohd. Shaban Khan v. Shri R.H. Mendonca & Ors.**, reported in 2000 All M.R. (Cri.) 177.

23. In **Pradeep Nilkanth Paturkar's** case (supra), the detention order was set aside on the ground of delay in the facts where the order was passed on the basis of some criminal cases registered against the detenu as well as on the basis of statements of the witnesses. However, the said order of detention was passed after five months and eight days from the registration of the last case and more than four months from the submission of the proposal. The statements of the witnesses which were referred to in the grounds of detention were obtained after the detenu was released on bail in all the criminal cases. It was in those circumstances, that the delay was considered as fatal.

24. The Division Bench of this Court in **Shri Pramod @ Popat @ Poptya Mahadeo Adsul's** case (supra), placing

reliance in the decision of the Apex Court in **Amanullah Khan Pathan's** case (supra) held that the date for the purpose of computation of time consumed for issuance of the order is to be counted from the date of the last incident or the last in-camera statement recorded by the police.

25. In **Abdul Rehman Mohd.'s** case (supra), the Division Bench while dealing with the issue regarding the delay in passing the detention order had held that taking into account the gravity of the offences and its vulnerability to effect on the public, even though there is a gap of three months in the light of the facts disclosed in the C.R. and the in-camera statement, and the passing of the detention order, it cannot be said that the live link of prejudicial activities and the rationale of passing the order cannot be said to have been snapped as the potentiality and propensity to commit the offence in grave nature was writ large in the grounds of detention.

26. The affidavits in-reply clearly explain the time spent from the last incident till the date of passing of the order of detention. The explanation is in detail and satisfactory. It is to be noted that the respondents are not required to give the day-to-day or minute-to-minute explanation in relation to the time

spent from the last incident till the date of issuance of the order. The time spent in the process has to be reasonable one and that itself can be considered as satisfactory explanation regarding the period taken by the authorities for issuance of such order.

27. The affidavit of Prashant K. Deshpande, Senior Inspector of Police, Mumbra police station clearly reveals that the chargesheet against the petitioner in respect of C.R. No.245/2003 and C.R. No.191/2003, were filed on 5-11-2003 and 7-11-2003 respectively. The anonymous application dated 14-11-2003 was received on 26-11-2003. Consequent to discreet enquiries, two in-camera statements came to be recorded on 4-12-2003 and 5-12-2003. Further an anonymous call was received on 12-12-2003. Taking into consideration all the materials, the sponsoring authority prepared the proposal and forwarded the same through proper channel on 9-1-2004. The A.C.P., after verifying the records, forwarded the same to the D.C.P. on 12-1-2004. The D.C.P., on verification thereof, submitted the same to the detaining authority on 16-1-2004 and the detaining authority endorsed thereof and forwarded the same on 21-1-2004 to the A.C.P. (Crime) Prevention, who after preparing a detailed note gave his endorsement on 24-1-2004 and forwarded the same to the Addl.C.P. (Crime) who, in turn, after going through it endorsed

the same on 29-1-2004. Thereafter, the proposal was placed before the detaining authority who approved the same and on formulation of the grounds of detention on 30-1-2004 and the grounds being verified by the A.C.P. (Crime) Prevention were endorsed on 17-2-2004 and further endorsed by Addl. C.P. (Crime) on 20-2-2004 and ultimately the grounds were approved by the detaining authority on 21-2-2004 and final draft being prepared in that regard, the detaining authority issued the order on 25-2-2004. The detail description given regarding the time consumed for the purpose of finalisation of the grounds and issuance of the order of detention apparently reveals that there was no unreasonable delay and on the contrary satisfactory explanation justifies the period spent for issuance of the detention order.

28. In this regard one has to take note of the decision of the Apex Court in **Union of India and another v. Chaya Ghoshal and another**, reported in 2004 AIR SCW 6999. Therein there was a delay of about 11 months from the date of the incident based on which the order of detention was passed. However, the Apex Court was satisfied with the explanation forwarded taking into consideration the factual scenario brought on record. Therein the order of detention was primarily based on the ground that on the basis of information received on 8-1-2002 by the Special Investigation Branch, Kolkata

Customs, eight containers were off-loaded from the vessel of Vishakapatnam Port and were detained and examined. The allegations was that few Kolkata based exporters had exported on 5-1-2002 readymade garments, ball pens and side rubber wheels grossly mis-declaring the quantity, description and value with an ulterior motive to avail undue drawback worth crores of rupees. The proposal for detention was sent on 4-7-2002 and the statement of the detenu was recorded on 16-7-2002. The proposal for detention was considered by the Central Screening Committee on 18-9-2002 and after consideration of all the relevant materials, the order of detention came to be passed on 20-11-2002. The arrest was done on 17-12-2002. The Apex Court considering the factual scenario held that though there was delay, it was satisfactorily explained. The explanation to the effect that:

"The process of investigation started in January, 2002 consequent upon seizure of goods on 24-1-2002. Writ petition was filed in the Calcutta High Court and an interim order was passed staying further effect on the summons and maintenance of status quo of examination of goods. Reply was filed on 12-2-2002. Another Writ Petition was filed on behalf of the

detenu on 20-2-2002. The High Court passed a direction for personal appearance of detenu on 28-2-2002. The date of personal appearance was adjourned to 5-3-2002. On 8-3-2002 the Writ Petition was dismissed for non-prosecution. Another application was filed by another concern. Thereafter various statements were recorded. The interim order passed on 29-1-2002 was vacated and the judgment was delivered on 8-5-2002; summons were issued to the detenu and information was sought for in terms of the High Court's order dated 6-5-2002. In between Writ Petition No.573 of 2002 was filed. Summons were issued and the matter was further heard by a Calcutta High Court. Ultimately the detenu was traced on 16-7-2002 and statements were thereafter recorded and after he was remanded to judicial custody, his statement were recorded. Show cause notices were issued to the detenu and others. On 9-8-2002 the detenu retracted from his earlier statement. Finally the Central Screening Committee considered the

proposal on 18-9-2002. It was referred to the Detaining Authority and after discussions and supply of documents in October, 2002 the records, which were voluminous were placed before the Detaining Authority who asked for orders passed by the Chief Judicial Magistrate dated 2-9-2002 and 11-9-2002. Copies of orders of the Chief Judicial Magistrate regarding extension of judicial custody and grant of bail were received on 15-11-2002 and the order of detention was passed on 20-11-2002."

29. It will be appropriate to take note of the decision of the Division Bench of this Court in **Mohmood Abubakar Marwari v. Union of India and others**, reported in 1982 Cri.L.J. 53. Therein while dealing with the issue regarding delay, it was clearly observed that mere lapse of time hardly means anything unless there has, in consequence, arisen or has accrued some equity or right which in justice should not be adversely affected on account of delay. Undoubtedly, that was a case arisen out of a show cause notice issued under the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976. However, fact remains that delay by itself cannot be fatal when there is

satisfactory explanation. In other words, if the materials on record justifiably reveal sufficient cause for the delay, certainly it cannot be said that it would snap the live link between the order of detention and the purpose which is sought to be attained by execution of such an order.

30. As no other ground is canvassed, for the reasons stated above, the challenge to the impugned order of detention is devoid of substance and hence the petition fails and is dismissed. The rule is discharged with no order as to costs.

(R.M.S. Khandeparkar, J.)

(P.V. Kakade, J.)